

Party Name : BIRHARI DEBBARMA Vs SRI. G.KAMESHWAR.RAO & ORS

THE HONBLE MR. JUSTICE S.TALAPATRA

Notice of this proceeding was restricted to the respondent No.2 by the order dated 02.04.2015.

Later on, Sri Sukamal Bhattacharjee, Empowered Officer & Chief Engineer, PWD (PMGSY) and Sri Subrata Kumar Dash, the Executive Officer and the B.D.O., Bishalgarh, R.D. Block were summoned and asked to file their reply by the order dated 22.07.2015.

Mr. S. Deb, learned counsel appearing for Mr. Sukamal Bhattacharjee, Empowered Officer & Chief Engineer, PWD (PMGSY), has submitted that Mr. Bhattacharjee has filed a supplementary affidavit tendering his unconditional and unqualified apology.

Mr. Bhattacharjee was asked by the order dated 22.07.2015 to file a personal affidavit why he had asked the implementing agency to withdraw all construction materials from the disputed road in order to make the land free. By means of an elaborate affidavit, filed on 20.08.2015, Mr. Bhattacharjee has brought to the notice of this court that under the scheme of *Pradhan Mantri Gram Sadak Yojna*, the PMGSY in short, no fund is allocated for acquisition of land, but the State Government may acquire the land from their own fund for purpose of construction of the road under that scheme. As such, the Empowered Officer has no authority to acquire any land under that scheme and the alternative that was available to him was to make the land that has been used for construction of the road free for purpose of releasing the same to its true owner or possessor. He had no intention to violate any order of this court. Even there had been no intention to obstruct the way in the compliance of the order under reference.

From the reply filed by another officer namely, Sri Subrata Kumar Dash, Executive Officer (B.D.O) Bishalgarh R.D. Block it has come to the notice of this Court that the judgment and order dated 07.05.2014 delivered in W.P.(C) No.146 of 2014 was placed before Mr. Bhattacharjee for his opinion and as such, he had substantive knowledge about the said direction of this court for taking appropriate steps to acquire the land of the petitioners as utilised for construction of the road. Despite that he had issued that communication dated 19.11.2014 firstly for settlement of the dispute and if failed, withdraw all the constructions in order to make the land free in conflict with the direction that this court made. It was incumbent to ascertain the individual plots, with their measurement, utilised in construction of the said road and thereafter by dint of the acquisition process, due compensation was to be determined, awarded and paid as per law. The entire exercise was directed to be completed within 8(eight) months from the day of the judgment and order including payment of the compensation to the individual petitioners. The petitioners, if asked by the authority, was asked to cooperate and furnish the required documents for carrying out the inquiry for mapping their individual plot/s and ascertaining its measurement in terms of the said order.

Mr. Subrata Kumar Dash by filing an affidavit has submitted that he has complied the order of the Empowered Officer and the Chief Engineer, PWD(PMGSY) and he has just replicated his version in his note. It would be pertinent to note in this juncture that one of the respondents to whom this Court issued the notice, the respondent No.2 by filing the reply has categorically revealed that the State had taken the initiative for acquisition of the utilised land and the due exercise had been taken up. But before such exercise could reach its finality, the petitioners whose land were covered by the said construction, executed 4(four) gift deeds donating the land for construction of the road land and they had withdrawn their claim for any compensation. Copies of those gift deeds were also submitted in this court and this court has appreciated those gift deeds.

This court has observed that such practice of 'obtaining' the gift deeds after construction of the road is not only unwelcome but it smacks of coercion in the context. But since the petitioners have withdrawn their claim, there is nothing left to be substantially complied with. But this Court before parting with the records is constrained to observe that the way Mr. Bhattacharjee has come in conflict with the direction of the Court is entirely unaccepted from a public officer.

The apex court has held in **Samatha vs. State of A.P. and others**, reported in (1997) 8 SCC 191 that the ancestral property of the tribals of this county has to be dealt with sensibility and strictly in accordance with law inasmuch as their livelihood and occupation are in most of the cases, dependent on those pieces of land and if their land is acquired without due process, it implies denial of the human rights. In future, when the land would be required to be utilised for construction of the road under the said scheme, it has to be first ascertained whether the land to be used for the construction of the road has been made available following the due process of law or not. If the lands are even gifted, the Empowered Officer or the Project Officer shall scrutinize whether the property documentation had been lawfully done or not. In absence of proper documentation as to the transfer of land for construction of the road under the said scheme, if it is found by this court that the land particularly from the tribals has been utilised under this scheme by any officer that will be viewed very seriously and no leniency in condonation of such act would be shown.

In the emerging context and subject to what has been observed above, this Court is inclined to accept the unconditional apology tendered both by Mr. Bhattacharjee, Empowered Officer & Chief Engineer, PWD (PMGSY) and Mr. Subrata Kumar Dash, Executive Officer and B.D.O, Bishalgarh R.D. Block. In the considered opinion of this court that the respondent No.2 has not acted in conflict with the order of this court. Thus, this contempt proceeding is closed.

Personal appearance of Mr. Bhattacharjee, Empowered Officer & Chief Engineer, PWD (PMGSY) is dispensed with.